

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD JULIUS DONALDSON,
Plaintiff,
v.
MERRICK R. GARLAND, et al.,
Defendants.

No. 2:21-cv-1178 KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a federal prisoner, proceeding pro se and in forma pauperis, with this civil action pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388 (1971). On March 4, 2022, the court screened plaintiff's amended complaint and found plaintiff stated potentially cognizable Eighth Amendment claims against defendants Allred, Tuttle and Tabor, and a potentially cognizable negligence claim under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b), against defendant United States (hereafter "defendant"). (ECF No. 19 at 1.) Defendant's motion to dismiss plaintiff's pleading for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, or, in the alternative, to dismiss for failure to state a claim under Rule 12(b)(6), is fully-briefed. (ECF Nos. 27, 29, 30.)

As discussed below, defendant's motion should be granted.

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1 Plaintiff's Allegations

2 Plaintiff was incarcerated at the Federal Correctional Institution in Herlong, California
3 ("FCI Herlong"), at all times relevant herein. Plaintiff alleges that on March 14, 2017, while
4 working in the education department, he attempted to lift a large bag of books from a cart. (ECF
5 No. 17 at 9.) He "felt & heard . . . a 'pop' sound, which also sent a jolt of pain through his right
6 shoulder." (*Id.*) The gravamen of plaintiff's pleading is that he was not provided adequate
7 medical care for his injury by defendants Allred, Tuttle and Tabor, and that the necessary medical
8 care was unduly delayed. (ECF No. 17 at 1-18.) As to his claim under the FTCA, plaintiff
9 alleges:

10 defendant United States of America, by and through the actions of
11 [its] employees, was negligent in their duty to provide the proper
12 procedures for ensuring that medical injuries that are serious in
13 nature, and require immediate and/or timely action/attention, are
14 handled adequately in a timely, professional, and medically
acceptable manner, and in accordance with the proper standard of
care and conduct as set forth by California law, and the rights
afforded to plaintiff by the Eighth Amendment of the United States
Constitution.

15 (ECF No. 17 at 18-19.) Plaintiff then incorporates his allegations concerning his medical care
16 related to his work injury. (ECF No. 17 at 19-20.) He further alleges that staff members at the
17 Health Services Department of FCI Herlong breached their duties by failing to ensure plaintiff
18 received necessary medical treatment "in a timely, professional, and medically acceptable
19 manner, and in accordance with the standard of care and conduct as set forth by California law."
20 (*Id.* at 20 ¶ 135.) Plaintiff seeks money damages.

21 Legal Standards

22 Motion To Dismiss Under Rule 12(b)(1)

23 Rule 12(b)(1) of the Federal Rules of Civil Procedure requires that an action be dismissed
24 if the court lacks jurisdiction. "A party invoking the federal court's jurisdiction has the burden of
25 proving the actual existence of subject matter jurisdiction." *Thompson v. McCombe*, 99 F.3d
26 352, 353 (9th Cir. 1996) (per curiam); *see also Chandler v. State Farm Mut. Auto. Ins. Co.*, 598
27 F.3d 1115, 1122 (9th Cir. 2010). When considering a motion to dismiss pursuant to Rule
28 12(b)(1), the Court is not "restricted to the face of the pleadings, but may review any evidence,

1 such as affidavits and testimony, to resolve factual disputes concerning the existence of
2 jurisdiction.” McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988).

3 “The objection that a federal court lacks subject-matter jurisdiction . . . may be raised by a
4 party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry
5 of judgment.” Arbaugh v. Y&H Corp., 546 U.S. 500, 506 (2006). A jurisdictional attack may be
6 facial or factual. Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). A factual
7 attack can rely on extrinsic evidence in arguing that subject-matter jurisdiction does not exist. Id.
8 (citation omitted). Once the moving party presents evidence properly brought before the court,
9 the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its
10 burden of establishing subject matter jurisdiction. Savage v. Glendale Union High Sch., 343 F.3d
11 1036, 1039 n.2 (9th Cir. 2003).

12 Rule 12(b)(6)

13 Rule 12(b)(6) of the Federal Rules of Civil Procedures provides for motions to dismiss for
14 “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In
15 considering such a motion, the court must accept as true the allegations of the complaint in
16 question, Erickson v. Pardus, 551 U.S. 89 (2007), and construe the pleading in the light most
17 favorable to the plaintiff. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969); Meek v. County of
18 Riverside, 183 F.3d 962, 965 (9th Cir. 1999). Still, to survive dismissal for failure to state a
19 claim, a pro se complaint must contain more than “naked assertions,” “labels and conclusions” or
20 “a formulaic recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly,
21 550 U.S. 544, 555-57 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of
22 action, supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662,
23 678 (2009). Furthermore, a claim upon which the court can grant relief must have facial
24 plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads
25 factual content that allows the court to draw the reasonable inference that the defendant is liable
26 for the misconduct alleged.” Iqbal, 556 U.S. at 678.

27 “As a general rule, a district court may not consider any material beyond the pleadings in
28 ruling on a Rule 12(b)(6) motion.” Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001)

(internal quotes and citation omitted), overruled on other grounds by Galbraith v. County of Santa Clara, 307 F.3d 1119 (9th Cir. 2002). Otherwise, the motion is treated as one for summary judgment. Lee, 250 F.3d at 688. There are exceptions for material which is properly submitted as part of the complaint and “matters of public record” which may be judicially noticed. Id. at 688-89. “If the documents are not physically attached to the complaint, they may be considered if the documents’ ‘authenticity . . . is not contested’ and ‘the plaintiff’s complaint necessarily relies’ on them.” Id. at 688 (quoting Parrino v. FHD, Inc., 146 F.3d 699, 705-06 (9th Cir. 1998)).

A motion to dismiss for failure to state a claim should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief. Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984). In general, pro se pleadings are held to a less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). The court has an obligation to construe such pleadings liberally. Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (*en banc*). However, the court’s liberal interpretation of a pro se complaint may not supply essential elements of the claim that were not pled. Ivey v. Bd. of Regents of Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982).

Sovereign Immunity

Sovereign immunity shields the United States and its agencies from suit. FDIC v. Meyer, 510 U.S. 471, 475 (1994). “It is well settled that the United States is a sovereign, and, as such, is immune from suit unless it has expressly waived such immunity and consented to be sued.” Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985). “The waiver of sovereign immunity is a prerequisite to federal-court jurisdiction.” Tobar v. U.S., 639 F.3d 1191, 1195 (9th Cir. 2011). If a plaintiff cannot establish that the action against the United States falls within a waiver of sovereign immunity, the action must be dismissed. See Dunn & Black, P.S. v. U.S., 492 F.3d 1084, 1088 (9th Cir. 2007), citing Cunningham v. United States, 786 F.2d 1445, 1446 (9th Cir. 1986) (party seeking redress bears the burden to show that the United States has waived its immunity as to the specific claim asserted).

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1 Inmate Accident Compensation Act (“IACA”)

2 The Inmate Accident Compensation Act, 18 U.S.C. § 4126, authorizes the Federal Prison
3 Industries to compensate inmates “for injuries suffered . . . in any work activity in connection
4 with the maintenance or operation of the institution in which the inmates are confined.” 18
5 U.S.C. § 4126(c)(4). The United States Supreme Court has held that the IACA is the exclusive
6 remedy against the United States for work-related injuries and bars a prisoner from suit under the
7 Federal Tort Claims Act for work related injuries. United States v. Demko, 385 U.S. 149, 150-54
8 (1966).

9 Motion to Dismiss by Defendant United States

10 Defendant argues that plaintiff’s FTCA claims should be dismissed because they are
11 precluded by another statute, the IACA, which requires that all work-related claims for injuries
12 sustained by an inmate be brought pursuant to its terms and expressly precludes relief under other
13 statutes such as the FTCA. (ECF No. 27-1 at 3-5.) Defendant asserts that this includes claims
14 alleging negligence of medical staff in treating work-related injuries.

15 In opposition, plaintiff contends he is suing defendant for “negligence in the ongoing
16 failure to provide adequate medical care,” “based on Eighth Amendment Constitutional
17 violations; specifically deliberate indifference, as well as cruel and unusual punishment which
18 resulted from unnecessary & wanton pain and suffering as a result of the deliberately indifferent
19 actions of the responsible medical staff members and their failure to provide adequate medical
20 care.” (ECF No. 29 at 2.) He argues that he is not suing for any form of negligence causing the
21 injury, but rather based on the extensive delay in receiving adequate medical care. (ECF No. 29
22 at 2.) Plaintiff asserts that defendant cannot shield itself from liability based on the fact that
23 plaintiff’s injury was sustained while working at the prison. (ECF No. 29 at 3.)

24 In reply, defendant reiterates that “[w]hen a prisoner is injured on the job, he cannot bring
25 an action against the United States under the FTCA for that injury or for negligence by United
26 States agents regarding the treatment of that injury.” (ECF No. 30 at 1) (quoting Vander v. U.S.
27 Dep’t of Justice, 268 F.3d 661, 664 (9th Cir. 2001). Instead, plaintiff’s sole remedy against the
28 United States is under the IACA. Plaintiff “appears to conflate his Bivens claims with his claim

1 of negligence against the United States, asserting that his Eighth Amendment deliberate
 2 indifference allegations ‘form the basis of the suit against the United States . . . and the
 3 negligence claim against them.” (ECF No. 30 at 2, quoting ECF No. 29 at 2.) Further, the legal
 4 authorities relied upon by plaintiff (discussed below) do not support plaintiff’s position. (ECF
 5 No. 30 at 2.) Because the court lacks jurisdiction over plaintiff’s FTCA claim, defendant asks the
 6 court to grant the motion to dismiss without further leave to amend.

7 Discussion

8 The undersigned agrees that plaintiff mistakenly combines his Bivens claims with his
 9 claim of negligence against the defendant. As plaintiff was previously informed: “a Bivens
 10 action can be brought for constitutional violations; the FTCA provides a remedy only for
 11 common law torts.” (ECF No. 15 at 9.)

12 Contrary to plaintiff’s arguments, plaintiff’s position is not supported by Wooten v.
 13 United States, 825 F.2d 1039 (6th Cir. 1987). Rather, as the Ninth Circuit subsequently
 14 explained,

15 [s]ection 4126 [the IACA] is ... the exclusive remedy when a work-
 16 related injury is subsequently aggravated by negligence and
 17 malpractice on the part of prison officials....” Wooten v. United
 18 States, 825 F.2d 1039, 1044 (6th Cir.1987). Or, as the Fifth Circuit
 19 put it, “[d]espite the appellant’s allegation that the negligence of the
 20 hospital worker occasioned further injuries, for which he seeks
 21 damages, he is barred from litigating the matter under the Federal
 Tort Claims Act since the cause of his original injury was work-
 related....” Thompson v. United States, 495 F.2d 192, 193 (5th
 Cir.1974) (per curiam). District courts have said the same thing. See
Byrd v. Warden, Fed. Det. Headquarters, 376 F.Supp. 37, 38-39
 (S.D.N.Y.1974); Jewell v. United States, 274 F.Supp. 381, 382-83
 (N.D.Ga.1967).

22 Vander v. U. S. Dept. of Justice, 268 F.3d 661, 663-64 (9th. Cir. 2001). Moreover, while the
 23 court acknowledged that the prisoner could recover for injuries sustained while performing
 24 nonwork-related tasks (id. at 663-64), in this case plaintiff asserts no injuries sustained from tasks
 25 that are not work-related. Instead, plaintiff contends that his injuries resulted from the extensive
 26 delay in receiving medical treatment. But plaintiff’s injuries remain a result of the injury to his
 27 shoulder sustained while plaintiff was performing his prison job; any further aggravation of the
 28 injury as a result of the negligent provision or omission of medical care, including such delay,

1 bars plaintiff from pursuing claims under the FTCA. Wooten, 825 F.2d at 1044; Vander, 268
2 F.3d at 663-64. Plaintiff provides no legal authority to the contrary.

3 Here, there is no dispute that plaintiff seeks relief in this case for work-related injuries
4 because his shoulder was injured when he was working at the prison. Because plaintiff was
5 injured on the job, the IACA is the exclusive remedy for his injuries. “When a prisoner is injured
6 on the job, he cannot bring an action against the United States under the FTCA for that injury or
7 for negligence by United States Agents regarding treatment of that injury.” Vander, 268 F.3d at
8 664. As such, the exclusive remedy against the United States for plaintiff’s injuries in this case is
9 the IACA. Demko, 385 U.S. at 151-52. For this reason, the court lacks jurisdiction over
10 plaintiff’s FTCA claim, and such claim should be dismissed.

11 Further, plaintiff’s reliance on Carlson v. Green, 446 U.S. 14, 16 (1980), is also
12 misplaced. Carlson involved an action for damages against individual federal government
13 employees pursuant to Bivens, not against the United States. Carlson, 446 U.S. at 17. In
14 Carlson, the Court recognized a damages remedy against federal prison officials for failure to
15 provide adequate medical treatment under the Eighth Amendment’s Cruel and Unusual
16 Punishment Clause. Id. No claim was made under the FTCA, and the Court did not find that
17 federal prisoners can pursue negligence claims against the United States under the FTCA based
18 upon putative Eighth Amendment violations.

19 Plaintiff further asserts that he is bringing a Bivens claim against defendant under the
20 Eighth Amendment based on health services staff’s deliberate indifference to plaintiff’s serious
21 medical needs. However, a Bivens action will not lie against the United States, agencies of
22 the United States, or federal agents in their official capacity. See FDIC v. Meyer, 510 U.S. at
23 486; Daly-Murphy v. Winston, 837 F.2d 348, 356 (9th Cir. 1987) (“An individual may not
24 maintain a Bivens action for monetary damages against the United States.”). Prisoners who claim
25 deprivation of their constitutional rights by federal officers may bring a Bivens action only if the
26 claim is alleged against a federal employee in his or her individual capacity. FDIC v. Meyer, 510
27 U.S. at 485-86; Vaccaro v. Dobre, 81 F.3d 854, 856 (9th Cir. 1996). Thus, plaintiff may not seek

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1 redress against defendant United States under Bivens based on the alleged constitutional
2 violations.

3 Finally, as argued by defendant, “[i]t is well settled that the United States is a sovereign,
4 and, as such, is immune from suit unless it has expressly waived such immunity and consented to
5 be sued.” Gilbert, 756 F.2d at 1458; United States v. Dalm, 494 U.S. 596, 608 (1990). The
6 waiver must be unequivocally expressed. See United States v. Testan, 424 U.S. 392, 399 (1976).
7 “[T]he United States simply has not rendered itself liable under [the FTCA] for constitutional tort
8 claims.” FDIC v. Meyer, 510 U.S. at 478; see also Thomas-Lazear v. F.B.I., 851 F.2d 1202, 1207
9 (9th Cir. 1988) (“the United States has not waived its sovereign immunity in actions seeking
10 damages for constitutional violations.”) Plaintiff offers no facts or evidence suggesting defendant
11 waived sovereign immunity.

12 Accordingly, to the extent plaintiff purports to sue the United States for constitutional
13 violations under Bivens, the court lacks subject matter jurisdiction over these claims, and such
14 putative claims fail as a matter of law.

15 Leave to Amend

16 Although the Court would generally grant plaintiff leave to amend in light of his pro se
17 status, amendment is futile in this instance because the deficiencies cannot be cured by
18 amendment. See Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000); Schmier v. U.S. Court of
19 Appeals for the Ninth Circuit, 279 F.3d 817, 824 (9th Cir. 2002) (recognizing “[f]utility of
20 amendment” as a proper basis for dismissal without leave to amend).

21 Conclusion

22 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court is
23 directed to assign a district judge to this case; and

24 IT IS RECOMMENDED that:


- 25 1. Defendant United States’ motion to dismiss (ECF No. 27) be granted;
- 26 2. Plaintiff’s FTCA and putative Bivens claims against the defendant United States be
27 dismissed with prejudice; and

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1 3. This case now proceeds on plaintiff's Bivens claims based on his Eighth Amendment
2 claims against the remaining defendants.

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
8 objections shall be filed and served within fourteen days after service of the objections. The
9 parties are advised that failure to file objections within the specified time may waive the right to
10 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: October 11, 2022

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14 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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